

Section 24 - Adjustment Factors for Direct Care, Other Direct Care and Indirect Care Costs

1. An appropriate composite economic change index may be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care and for purposes of adjusting limitations of direct care costs, other direct care costs, and indirect care costs, but may not be used to adjust property costs.
2. For purposes of this section:
 - a. "Appropriate composite economic change index" means one-half of the increase, if any, in the consumer price index, plus one-half of the increase, if any, in the Data Resources, Incorporated, North Dakota specific nursing home input price index.
 - b. The "consumer price index increase" means the percentage (rounded to the nearest one-tenth of one percent) by which the consumer price index for urban wage earners and clerical workers (CPI-W), all items, United States city average for the quarter ending September thirtieth of the year immediately preceding the rate year (as prepared by the United States Department of Labor) exceeds that index for the quarter ending September thirtieth of the second year preceding the rate year.
 - c. "Data Resources, Incorporated, North Dakota specific nursing home input price index" means:
 - (1) For purposes of determining the adjustment factor applicable to historical costs for direct care, other direct care, and indirect care, the composite index for the eighteen-month period beginning immediately after the report year ends; and
 - (2) For purposes of determining the adjustment factor applicable to the limit rates for direct care, other direct care, and indirect care, the composite index for the period beginning January 1, 1998, and ending at the end of the rate year.

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Section 25 - Rate Limits and Incentives

1. Limits - All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in Section 5 - Exclusions must be used to establish a limit rate for the Direct Care, Other Direct Care, and Indirect Care cost categories. The base year is the report year ended June 30, 1996. Base year costs may not be adjusted in any manner or for any reason not provided for in this section.
 - a. The limit rate for each of the cost categories will be established as follows:
 - (1) Historical costs for the report year ended June 30, 1996, as adjusted must be used to establish rates for all facilities in the Direct Care, Other Direct Care and Indirect Care cost categories. The rates as established must be ranked from low to high for each cost category.
 - (2) For rate years beginning on or after January 1, 2000, the limit rate for each cost category is calculated based on:
 - (a) For the Direct Care cost category, \$64.73 multiplied by the adjustment factor determined in paragraph c(2) of Section 24-Adjustment Factors for Direct Care, Other Direct Care and Indirect Care Costs;
 - (b) For the Other Direct Care cost category, \$12.43 multiplied by the adjustment factor determined in paragraph c(2) of Section 24-Adjustment Factors for Direct Care, Other Direct Care and Indirect Care Costs; and
 - (c) For the Indirect Care cost category, \$29.12 multiplied by the adjustment factor determined in paragraph c(2) of Section 24-Adjustment Factors for Direct Care, Other Direct Care and Indirect Care Costs;
 - b. A facility which has an actual rate that exceeds the limit rate for a cost category will receive the limit rate.

2. The department will review, on an ongoing basis, aggregate payments to nursing facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under Medicare payment principles. If aggregate payments to nursing facilities exceed estimated payments under Medicare, the department will make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under Medicare payment principles.
3. The department shall accumulate and analyze statistics on costs incurred by the nursing facilities. These statistics may be used to establish reasonable ceiling limitations taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing facility and the costs that must be incurred for the care of residents in an efficiently and economically operated nursing facility. Such limits, if established by the department, may not be less, in the aggregate, than the 60th percentile of total actual allowable cost per diem for each group of nursing facilities established under NDCC Chapter 50-24.4 based on cost reports of allowable operating costs in the previous reporting year. These limitations may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. It shall be the option of the department to implement the ceilings so mentioned at any time based upon the information available and under guidelines required within the regulation of Title XIX.
4. For a facility with an actual rate below the limit rate for Indirect Care costs, an incentive amount equal to 70% times the difference between the actual rate, exclusive of inflation indices, and the limit rate, in effect at the end of the year immediately preceding the rate year, up to a maximum of \$2.60 will be included as part of the Indirect Care cost rate.
5. A facility will receive an operating margin of 3% based on the lesser of the actual Direct Care and Other Direct Care rates, exclusive of inflation indices, or the limit rate, in effect at the end of the year immediately preceding the rate year. The 3% operating margin will then be added to the rate for the Direct Care and Other Direct Care cost categories.
6. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:
 - a. Actual census for the report year; or
 - b. Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
 - (1) Multiplied times three hundred sixty-five; and

- (2) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
7. The department may waive or reduce the application of paragraph 6 if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
- a. The facility has reduced licensed capacity; or
 - b. The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision d.
8. A government nursing facility funding pool is created to increase payment to city-owned facilities in proportion to their share of Medicaid days provided during the rate year. The pool is created subject to availability of funds and subject to the payment limits of 42 CFR 442.272 (Application of Upper Payment Limits - payments may not exceed the amount that can reasonably be estimated to be paid under Medicare payment principles).
- a. Every nursing facility's average Medicaid rate for the rate year is compared to the average Medicare rate applicable to the same period for the same population. The difference between the average Medicaid rate and the average Medicare rate is multiplied by the number of Medicaid days in that facility for the period and the product is then summed for all nursing facilities. The total is the maximum pool which can be paid for the rate year. See appendix C for example.
 - b. The pool for each rate year is calculated and distributed on or about July 1 of the year following each rate year. Each city-owned facility's distribution amount is based on the ratio of the facility's Medicaid days to total Medicaid days for all city-owned facilities participating in the distribution pool. See appendix C for example.

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Section 26 - Rate Adjustments**1. Desk Audit Rate**

- a. The cost report will be reviewed taking into consideration prior year's adjustments. The facility will be notified by telephone or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department will review the information and make appropriate adjustments.
- b. The desk audit rate will be effective January 1 of each rate year unless the department specifically identifies an alternative effective date and will continue in effect until a final rate is established.
- c. (Vacated)
- d. No decision on the request for reconsideration of the desk rate will be given by the department unless the facility has been notified that the desk rate is the final rate.
- e. The desk rate may be adjusted for special rates or one-time adjustments provided for in Section 28 - Special Rates or Section 29 - One Time Adjustments.
- f. The desk rate may be adjusted to reflect errors, adjustments or omissions for the report year which result in a change of at least ten cents per day for the rate weight of one.

2. Final Rate

- a. The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate will become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.
- b. The final rate will include any adjustments for nonallowable costs, errors or omissions, that are found during a field audit or are reported by the facility within twelve months of the rate year end and that result in a change from the desk audit rate of at least ten cents per day for the rate weight of one.
- c. (Vacated)
- d. The final rate may be revised at any time for special rates or one-time adjustments provided for in Section 28 or Section 29.

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- e. If adjustments, errors or omissions are found after a final rate has been established, the following procedures will be used:
- (1) Adjustments, errors or omissions found within twelve months of establishment of the final rate and resulting in a change of at least ten cents per day for the rate weight of one will result in a change to the final rate. The change will be applied retroactively as provided for in this section.
 - (2) Adjustments, errors or omissions found later than twelve months after the establishment of the final rate, and which would have resulted in a change of at least ten cents per day for the rate weight of one had they been included, will be included as an adjustment in the report year that the adjustment, error or omission was found.
 - (3) Adjustments resulting from an audit of home office costs and which result in a change of at least ten cents per day for the rate weight of one will be included as an adjustment in the report year in which the costs were incurred.
 - (4) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.
3. Adjustment of the Total Payment Rate
- a. The final rate as established will be retroactive to the effective date of the desk rate.

Section 27 - Rate Payments

1. The established rate shall be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.
2. The established rate shall be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate will be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.
3. If the established rate exceeds the rate charged to a private-pay resident on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund will be the difference between the established rate and the rate charged the private-pay residents times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to the private-pay residents plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision will also apply to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
4. The established rate is paid based on a prospective rate setting procedure. No retroactive settlements for actual costs incurred during the rate year which exceed the established rate will be made unless specifically identified in other sections of this manual.
5. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility will be effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments will not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

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Section 28 - Special Rates

1. For a new facility, the department will establish interim rates equal to the limit rates for Direct Care, Other Direct Care, and Indirect Care in effect for the rate year in which the facility begins operation, plus the Property rate. The Property rate will be calculated using projected property costs and certificate of need projected census. The interim rate will be in effect for no less than 10 months and no more than 18 months. Costs for the period in which the interim rates are effective will be used to establish final rates, which will be limited to the lesser of the interim or actual rates. If the final rate for Direct Care, Other Direct Care, and Indirect Care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in Section 26 - Rate Adjustments will be made. A retroactive adjustment to the Property rate will be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for Property and Indirect Care costs will be the greater of actual census or certificate of need projected census.
 - a. If the effective date of the interim rates is on or after March 1 and on or before June 30, the interim rates will be effective for the remainder of that rate year and will continue through June 30 of the subsequent rate year. The facility must file an interim cost report for the period ending December 31 of the year in which the facility first provides services. The interim cost report is due March 1 and is used to establish actual rates which will be effective July 1 of the subsequent rate year. The partial year rates established based on the interim cost report will include applicable incentives, margins, phase-ins, and adjustment factors and will not be subject to any cost settle-up. The cost reports for the report year ending June 30 of the current and subsequent rates years will be used to determine the final rates for the period that the interim rates were in effect.
 - b. If the effective date of the interim rates is on or after July 1 and on or before December 31, the interim rates will remain in effect through the end of the subsequent rate year. The facility must file a cost report for the partial report year ending June 30 of the subsequent rate year. This cost report will be used to establish the rates for the next subsequent rate year. The facility must file an interim cost report for the period July 1 through December 31 of the subsequent rate year. The interim cost report is due on March 1 and is used, along with the report year cost report, to determine the final rates for the period that the interim rates were in effect.

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- c. If the effective date of the interim rate is on or after January 1 and on or before February 29, the interim rates will remain in effect through the end of the rate year in which the interim rates become effective. The facility must file a cost report for the period ending June 30 of the current rate year. This cost report will be used to establish the rates for the subsequent rate year. The facility must file an interim cost report for the period July 1 through December 31 of the current rate year. The interim cost report is due on March 1 and is used, along with the report year cost report, to determine the final rates for the period that the interim rates were in effect.

The final rates will be limited to the lesser of the limit rates for the current rate year or the actual rates.

2. For a facility with renovations or replacements in excess of \$100,000, and without a significant capacity increase, the rates established for Direct Care, Other Direct Care, and Indirect Care, operating margins, and incentive based on the last report year, plus a Property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected Property rate will be effective at the time the project is completed and placed into service. The Property rate for the subsequent rate year will be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates will be adjusted using this methodology, except imputed census will be actual census if actual census exceeds ninety-five percent of total licensed capacity until such time as twelve months of property costs are reflected in the report year.
3. For a facility with a significant capacity increase, the rates established for Direct Care, Other Direct Care, and Indirect Care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. An interim Property rate will be established based on projected property costs and projected census. The interim Property rate will be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the Department of Health and Consolidated Laboratories through the end of the rate year. The facility must file an interim property cost report following the rate year. The interim cost report is due March 1 and is used to determine the final rate for Property and to establish the amount for a retroactive cost settle-up. The final rate for Property is limited to the lesser of the interim Property rate or a rate based upon actual property costs. The Property rate for the subsequent rate year will be

based on projected property costs and census imputed as 95% of licensed beds, rather than on property costs actually incurred during the report year and will not be subject to retroactive cost settle-up. Subsequent rates will be adjusted using this methodology except imputed census will be actual census if actual census exceeds 95% of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

4. For a facility which has no significant capacity increase and no renovations or replacements in excess of \$100,000, the rates based on the report year will be applied throughout the rate year for all licensed beds.
5. Rates for a facility changing ownership during the rate period are set under this subsection.
 - a. The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:
 - (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
 - (2) For a facility with less than four months of operation under the new ownership during the report year:
 - a) By indexing the rates established for the previous owner forward using the adjustment factor in section 24; or
 - b) By establishing a rate based on the previous owner's cost report, if the previous owner submits a cost report and allows the audit of that cost report, and if the change of ownership occurred after the report year end but prior to the beginning of the rate year.
 - b. Unless a facility elects to have a property rate established under paragraph c, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:
 - (1) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
 - (2) For a facility with less than four months of operation under the new ownership during the report year: